Office of the Conflict of Interest Commissioner

Paul D. K. Fraser, Q.C.

Annual Report 2010

Province of British Columbia

BRITISH COLUMBIA

Office of the Conflict of Interest Commissioner

Paul D. K. Fraser, Q.C.

Annual Report 2010

Office of the
Conflict of Interest
Commissioner

Paul D. K. Fraser, Q.C.
Commissioner

Mailing Address:
101 - 431 Menzies Street
Victoria, BC V8V 1X4

Telephone: 250 356-9283
Facsimile: 250 356-6580
www.gov.bc.ca/oci
conflictofinterest@gov.bc.ca

BRITISH COLUMBIA

March, 2011

The Honourable Bill Barisoff, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia V8V 1X4

Dear Mr. Speaker,

It is an honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2010.

This Report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*, Chapter 287 of the Revised Statutes of British Columbia.

Sincerely,

Paul D. K. Fraser, Q.C.
Conflict of Interest Commissioner

Table of Contents

COMMISSIONER'S MESSAGE 1

ABOUT THE MEMBERS' CONFLICT OF INTEREST ACT AND THE OFFICE OF THE COMMISSIONER 2

ACTIVITIES DURING THE REPORTING PERIOD 11

PRIORITIES FOR NEXT YEAR 27

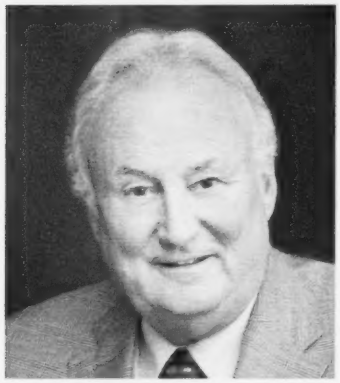
SUMMARY OF BUDGET AND FINANCIAL INFORMATION 29

ACKNOWLEDGEMENTS AND APPRECIATION 30

APPENDIX A: MEMBERS' CONFLICT OF INTEREST ACT 32

APPENDIX B: BUDGET PROPOSAL AND COMMITTEE REVIEW/RECOMMENDATION – FISCAL 2011/12-2013/14 33

COMMISSIONER'S MESSAGE



PAUL D. K. FRASER, Q.C.
Conflict of Interest Commissioner

It is a privilege to present this Report on the activities of the Office in 2010. For the first time, our Annual Report is being published as a compact disc. The text version is posted on our website www.gov.bc.ca/oci.

We provide service to both the public and to the Members of the Legislative Assembly. These dual responsibilities are equally important. Legislated conflict of interest regimes across the country differ in some important respects. In British Columbia, members of the public have status to seek opinions respecting the compliance of their elected Members with the stringent conduct and disclosure requirements contained in our *Members' Conflict of Interest Act*. Some other Canadian jurisdictions do not give the public such status. In British Columbia, the interest that the public takes in our work is central to the operation and increasing workload of the Office.

The Office continues to receive cooperation from both political party Caucuses, as well as the active assistance of all Members of the House in the tasks of reporting and scheduling that are an essential part of a rigorous and comprehensive public disclosure process. I can assure British Columbians that their elected representatives take their ethical and disclosure responsibilities seriously, and actively participate with our Office in administering the *Act*.

Since the draft of this Report was finalized, we have all been saddened by the death in January, 2011, of my predecessor, the Honourable H.A.D. Oliver, Q.C., just a few months short of his 90th birthday. Bert served as Commissioner for approximately a decade before retiring at the end of 2007. Members of his family have said that his work in this Office was among the work he most enjoyed in a long and distinguished career as a soldier, lawyer, judge and diplomat. For that we are all grateful.

ABOUT THE MEMBERS' CONFLICT OF INTEREST ACT AND THE OFFICE OF THE COMMISSIONER

British Columbia was one of the first provinces to enact comprehensive conflict of interest legislation in Canada. The *Members' Conflict of Interest Act* ("the *Act*") was introduced in 1990, and amended in 1992. Today the federal government, all ten provinces and all the territories have conflict of interest legislation.

While the *Act* covers all Members of the Legislative Assembly, some sections apply only to Ministers. For example, s. 9 prohibits Ministers from carrying on a business or a profession that is likely to interfere with their duties. The *Act* also imposes restrictions on the private activities of former Ministers and Parliamentary Secretaries following their departure from ministerial office.

British Columbia was one of the first provinces to enact comprehensive conflict of interest legislation in Canada

The Conflict of Interest Commissioner is an Officer of the Legislative Assembly, whose role is to independently and impartially interpret and apply the *Act*.

Definition

The definition of a conflict of interest is found in s. 2(1) and 2(2) of the *Act*:

> *2(1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.*
>
> *(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.*

Section 2(2) was the result of a 1992 amendment. At that time, BC was the only jurisdiction in Canada to include an *apparent* conflict of interest in its legislation.

BC was the first jurisdiction in Canada to issue an opinion on an apparent conflict of interest. In the landmark *Blencoe* decision, Commissioner E.N. (Ted) Hughes concluded that in the case of an apparent conflict of interest, it is beside the point that the Member sincerely intends to act in good faith and with only the public interest in mind. Rather, the critical factor in such cases is the perception in the mind of a reasonably well informed person that there appears to be a conflict between the Member's public duty and his or her private interest.

There are four specific prohibitions in the Act

A general prohibition **against conflicts of interest:**

> *A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest. (s. 3)*

A prohibition against using **insider information:**

> *A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest. (s. 4)*

A prohibition against using one's **influence** inappropriately:

> *A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest. (s. 5)*

A prohibition against accepting **extra benefits**:

> *A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office. (s. 7(1))*

Additionally, under s. 19 of the *Act*, a request may be made by the Legislative Assembly or the Executive Council respecting compliance of a Member with s. 25 of the *Constitution Act*. That section prohibits a Member, or a corporation in which he or she alone or jointly with close family members holds shares carrying more than 30% of the votes for the election of directors, from accepting from the Crown "money for the supply to the government of any goods, service or work… ."

The Commissioner is appointed after a rigorous selection process conducted by an all-party special committee of the Legislature. The appointment of the Commissioner must be approved on the motion of the Premier and approved by two-thirds of the Members present in the House. The Commissioner holds office for a term of five years, which may be renewed.

The Commissioner performs four separate but related roles

The Commissioner:

- acts as an **adviser** to Members to ensure they meet their obligations under the *Act*
- meets with each Member at least annually to review the **disclosure** of the Member's financial interests
- **gathers information** in response to requests made under the *Act*
- may undertake a **formal inquiry** into alleged contraventions of the *Act*

Advice

The Commissioner's primary role is that of an adviser to Members. The Commissioner encourages Members to consult with him at the earliest opportunity if they have any questions or concerns about their obligations so that potential conflict of interest situations can be avoided. The majority of requests usually come from Ministers, given the wider scope of their duties and their additional obligations under the *Act*.

Requests for opinions come in various forms. Members may have an informal conversation with the Commissioner, or may make a formal request for a written response. If the Commissioner decides that a Member has or may have a conflict of interest, he can make recommendations specifying a timeframe for compliance.

The opinion and recommendations of the Commissioner are confidential unless released by the Member or with the Member's consent.

Within two months of election and annually after that, each Member must file a **confidential disclosure statement** with the Commissioner, in the form prescribed by the regulations. This disclosure statement must contain an accounting of the *nature* of the assets, liabilities and financial interests of the Member, the Member's spouse, minor children and any private corporations they control.

The disclosure requirements are the same for all Members. There is a form on which they list their assets, liabilities and sources of income. There are accompanying forms for those who have minor children or interests in private corporations.

Once the confidential disclosure statement has been filed with our Office, the Member (and spouse if available) meets with the Commissioner to discuss their obligations under the *Act*. This annual meeting with the Commissioner is required for all Members (s. 16(3)).

After meeting with the Member, the Commissioner must prepare a **public disclosure statement** which contains all relevant information provided by the Member (and spouse if applicable).

The public disclosure statement is then filed with the Clerk of the Legislative Assembly. After filing, the Clerk makes the statement available to any person for inspection without charge during normal business hours, and must provide a copy of the statement upon request and payment of a reasonable copying charge.

If a change or event takes place that has a significant effect on the information the Member has previously disclosed, the Member has 30 days to report the change to the Commissioner by filing a "statement of material change". Notice of the change is then filed with the Clerk of the Legislative Assembly.

A key difference between the BC legislation and the federal legislation is that under BC's requirements, disclosures are qualitative rather than quantitative. That is, Members must disclose the *nature* of the assets, liabilities, and financial interests, not the *value* or the amount or the worth of those interests.

Members must disclose the nature of the assets, liabilities and financial interests, not the value, amount or the worth of those interests

Inquiry Powers

The Commissioner has the authority to conduct a **Formal Inquiry** upon receiving a request for an opinion (s. 21), based on an allegation of a contravention of the *Act* or, as noted above, of s. 25 of the *Constitution Act*. However, the Commissioner cannot, on his own initiative, commence a process to determine if there has been a breach of the *Act*. The request must come from a Member of the Legislative Assembly, or a member of the public. Additionally, the Executive Council may request an opinion on a matter of compliance of a member of the Executive Council, and the Legislative Assembly may request an opinion on any matter respecting the compliance of a Member (s. 19).

A Formal Inquiry is a slow, burdensome and costly process only to be embarked upon when the public interest demands it. When the Commissioner is asked to look into allegations that the *Act* has been contravened, the first step is to conduct research to ascertain whether there are reasonable and probable grounds to support the allegations. This part of our process is called the "**Information Gathering**" stage. The Commissioner then determines whether to proceed to the Formal Inquiry stage or dismiss the allegations as unwarranted.

If a Formal Inquiry is held under s. 19(1) of the *Act*, the Commissioner reports to the House and, in an appropriate case, makes recommendations on what penalty might apply, subject to the decision of the House.

Penalties

The possible penalties are listed under s. 22 of the *Act* and include a reprimand, suspension, a fine of up to $5,000, or a declaration that the Member's seat be declared vacant until an election is held in the Member's electoral district.

The Commissioner may recommend penalties against a Member, but the Legislative Assembly may accept or reject the recommendation

ACTIVITIES DURING THE REPORTING PERIOD

The various activities of the Office can conveniently be categorized as follows:

- Opinions prepared by the Commissioner and publicly released in response to requests made under s. 19 of the *Act*;
- Confidential opinions provided to Members under s. 18 of the *Act*;
- General information provided to Members and the public upon request;
- Information collection and disclosure activity;
- Website and external communications;
- Miscellaneous activities.

Publicly Released Opinions

The Commissioner provides opinions about Members' compliance in response to requests made under various subsections of the *Act*. Requests may come from:

- Members, under s. 19(1);
- members of the public, under s.19(2);
- Executive Council, under s. 19(3); or
- the Legislative Assembly, under s. 19(4).

Additionally, a Member who has requested a confidential opinion or recommendation under s. 18 may choose to make the opinion public.

During the reporting period, there were no requests by Members respecting the compliance of other Members with the provisions of the *Act*, and no requests from either the Executive Council or the Legislative Assembly.

The Commissioner issued one formal opinion in response to a request by a member of the public respecting an alleged contravention by a Member, which is summarized below. The allegations were brought forward by Mr. Chris Delaney in respect of an alleged contravention of the *Act* by the Premier.

Summary

A member of the public alleged that Premier Campbell misappropriated public funds for his personal benefit by attending the 2010 Bilderberg Meeting in Sitges, Spain from June 3 to June 6, 2010. In particular, it was alleged that the Bilderberg Meeting was a "private conference" that the Premier was invited to attend "personally", and accordingly the Premier's airfare expenses and the hospitality received constituted "strictly personal benefits." It was further alleged that, by accepting these benefits and neglecting to disclose them, the Premier breached his obligations under the *Members' Conflict of Interest Act.*

The Commissioner observed that it was not appropriate to characterize the Bilderberg Meeting as a "private conference". He found that although the invitation was "strictly personal", in the sense that it could not be transferred to anyone else, this did not mean that all of the benefits of attendance were personal. The Premier was invited to participate in his capacity as the head of the Government of British Columbia, and the "intellectual stimulation and benefit that the Premier received by attending the meeting was, given his position as head of the Government, also a benefit to the citizens of British Columbia". The Commissioner also noted that "[i]nformation is the currency of democracy and the source of that knowledge informs public policy" and the Premier's attendance had the effect of enhancing the province's international profile.

The Commissioner determined that the Premier did not act inappropriately in having his airfare to attend the Bilderberg Meeting paid by the Government of British Columbia or in not filing a disclosure statement in relation to the accommodation, meals and transportation provided at the meeting location. As the Premier attended the meeting in his official capacity, it was not necessary under the *Act* for Premier Campbell to disclose any of these expenses as "personal benefits".

For these reasons, the Commissioner concluded that no reasonable or probable grounds were disclosed to support either a finding that there had been a contravention of the *Act* or to support a decision to conduct a formal inquiry.

Confidential Opinions of the Commissioner Sought by Members and Requests for Information from all Sources

Under s. 18, Members may request that the Commissioner provide an opinion about any matter respecting the Member's obligations. Some requests are informal and do not proceed beyond the initial phone call or email to the Commissioner. Others are more substantial and involve background research and a written response. The Commissioner's opinion remains confidential, unless the Member chooses to disclose it. Our Office maintains statistics of the number and nature of these requests, as well as our response time.

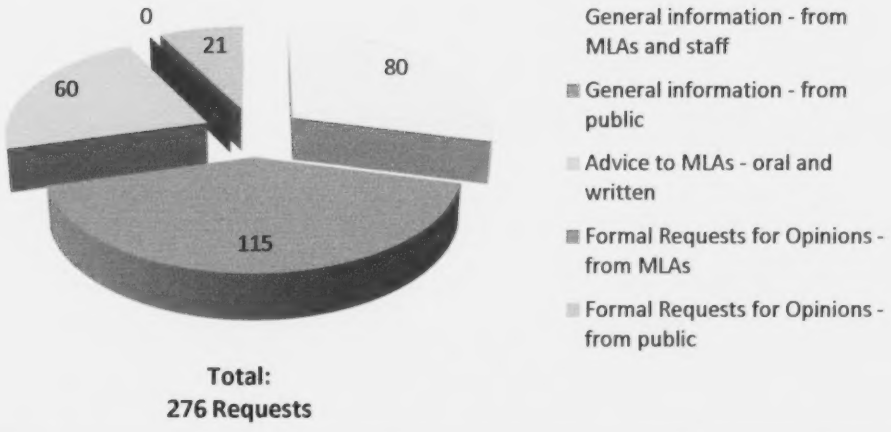
In addition, we receive many requests for general information from the public. A significant portion of these requests relate to matters beyond the jurisdiction conferred to the Commissioner under the *Act*, in which case we do our best to refer individuals to the appropriate agency. Commencing in 2010, we began keeping track of requests for general information, which we have included in our statistics.

Statistics for 2010

In 2010, our Office responded to a total of **276** requests from MLAs, their staff and the public.

Requests Received January 1 – December 31, 2010	
General Information	
from MLAs and their staff	80
from public (jurisdictional)	68
from public (non-jurisdictional)	47
TOTAL	**195**
Advice - Oral and Written (s. 18)	
to MLAs	60
TOTAL	**60**
Formal Requests for Opinions (s. 19)	
From MLAs	0
From public (jurisdictional)	14
From public (non-jurisdictional)	7
TOTAL	**21**
TOTAL	**276**

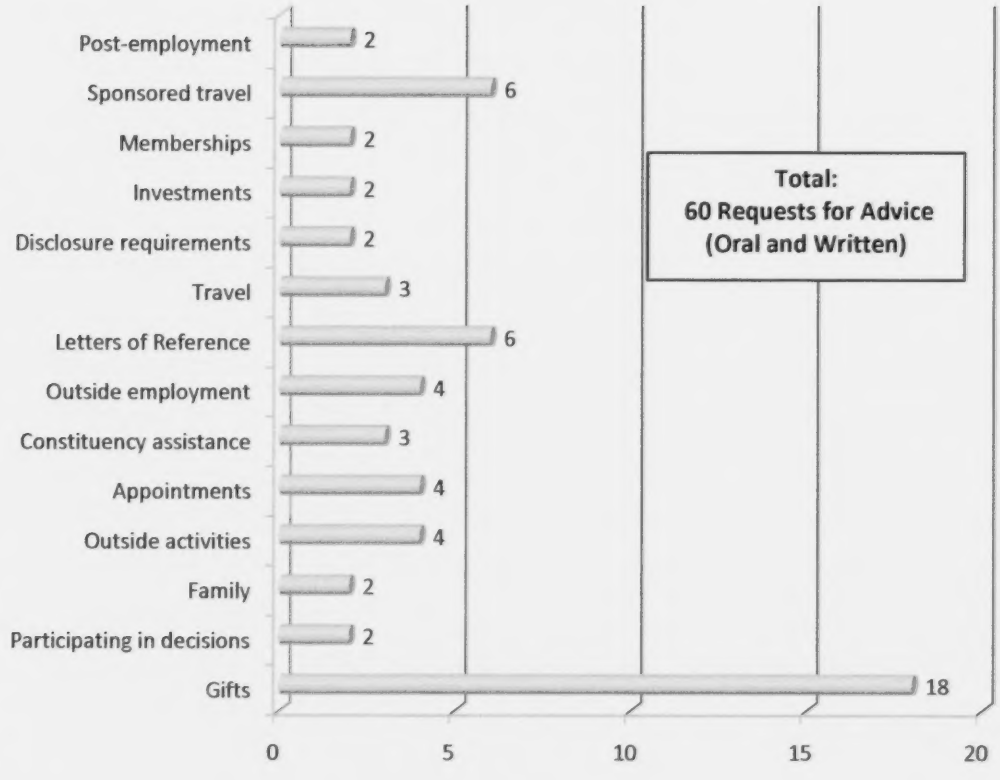
Requests Received - 2010



Total:
276 Requests

Time to Respond to Requests		
	time to respond (median)	time to respond (average)
General Information	Same day	Same day
Advice - Oral and Written (s. 18)	4 business days	6 business days
Formal Requests for Opinions (s. 19)	10 business days	15 business days

Requests for Advice from MLAs by Topic



The disclosure process has four stages mandated by the Act

- Members submit their **Confidential Disclosure Statements** to our Office
- The Commissioner conducts an **Interview** with each Member
- Preparation and signing of each Member's **Public Disclosure Statement**
- **Filing** of all Public Disclosure Statements with Clerk of the House

Confidential Disclosure Statement

Annually, every Member must provide to our Office a confidential disclosure statement in the form prescribed by the regulations to the *Act*. Under s. 16 (2), the disclosure statement must contain:

a) A statement of the nature of the assets, liabilities and financial interests of the Member, the Member's spouse and minor children, and private corporations controlled by any of them, and

b) Any other information that is prescribed by the regulations to be contained in the disclosure statement.

In an election year, disclosure forms must be distributed, completed by Members and collected by our Office within 60 days of Members being elected. Those Members appointed to the Cabinet must also comply with the provisions of s. 9 of the *Act* within 60 days of being appointed.

The great majority of Members found the disclosure forms, which had been in use since 1998, to be somewhat confusing, repetitive and not very user-friendly. As a result, in 2010 we drafted new forms that we believe are better focused and organized. The primary purpose for doing so was to bring clarity to the various forms and to make it easier for Members to navigate through the many questions posed.

Revised Disclosure Forms

Form 1
Member's Confidential Disclosure Form

Form 2
Disclosure Statement for Minor Children

Form 3
Controlled Private Corporation Statement

Form 4
Member's Statement of Material Change

Form 5
Member's Statement of Gifts and Personal Benefits

In addition to recasting and reformatting almost all of the existing forms, we added some new features which are summarized below:

- A new form for minor children has been created (Form 2), separate from that required for the Member and Spouse (Form 1)
- Form 1 takes into account that several Members have opened "hold mail investment accounts" and are deliberately unaware of the holdings in such accounts
- Requested tax information now includes all levels of government: municipal, provincial and federal
- All Members are asked to disclose what offices or directorships they may hold (previously, this information was requested only from members of Executive Council)
- All Members are asked to disclose whether they are parties in any litigation
- All Members are asked if they have created a blind trust
- All Members are asked if they have any support obligations, and whether they are in arrears
- A new definition of "material change" has been added

As the disclosure forms are prescribed as a regulation, Cabinet approval was required to make the proposed changes. Before taking the draft forms to Cabinet, we asked for input from both Caucuses. The feedback we received was positive and new Regulation was passed by Order in Council and deposited with the Registrar of Regulations on September 17, 2010. The new forms were emailed to all Members and posted on our website on September 20, 2010.

Under s. 16(6) of the *Act,* Members must continue to disclose any material changes that occur after they have filed their annual confidential disclosure statement. A material change statement must be filed with the Commissioner within 30 days of the material change.

Under the former regulation, the definition of "material change" included "acquisition or disposition...of any asset, liability, financial interest or source of income by a member, the members' spouse or a minor child of the member, or a private corporation controlled by any of them." Exceptions included assets and liabilities worth less than $1,000 and income under $1,000. Many of the changes that Members had to disclose added little to the public knowledge.

In September 2010, Cabinet approved a change to the definition of "material change." The basic definition remains the same, but the specific exceptions are not listed.

A New Definition of Material Change

> ***Disclosure is only required "if the change or event would reasonably be expected to have a significant effect on the information previously disclosed."***

The new definition is designed to make the reporting requirements more reasonable, as minor changes no longer need to be disclosed. The corollary is that it places a greater onus on Members to ensure that they use sound judgment to determine what is relevant and that their disclosure is made promptly within the 30 day timeframe.

Interview with Commissioner

The Members are required to submit their confidential disclosure forms to our Office within a specified period. The completed confidential statements remain securely and exclusively with our Office and are not publicly disclosed.

After the Members submit their confidential disclosure statements, they are required to meet in person with the Commissioner. In 2010, disclosure interviews were held in Victoria, Vancouver and Surrey during a six-week period in October and November.

At the interview, the Commissioner reviews the forms submitted by the Member to ensure accuracy and to discuss any questions or concerns. Any changes to the information on the forms are noted.

Public Disclosure Statement

Our Office then prepares each Member's Public Disclosure Statement (PDS). The PDS contains most, but not all, of the information contained in the Member's confidential disclosure statement, as well as a statement of any gifts or benefits that have been previously disclosed to the Commissioner. Under s. 17, certain information is excluded from the PDS, such as the Member's residential address and other personal information.

Filing Public Disclosure Statements with the Clerk of the House

After all of the Members have reviewed and approved their PDS, they are filed with the Clerk of the House where they are available for public inspection. The PDSs for 2010 were filed with the Clerk on December 17, 2010.

Website and External Communication

Ethics Bulletins

The Ethics Bulletins page on our website contains all the guidelines issued to Members to assist in dealing with their obligations under the *Act*.

A major focus over the past year has been to be proactive in providing information to Members about their obligations. Our aim has been to provide guidance on the issues that most commonly arise for Members. We have tried to use plain language and user-friendly formats for our publications, so that the publications are easy to follow not only for Members but also to make the information accessible to members of the public.

All guidelines and directives given to Members dealing with compliance with the Act are posted on our website

In 2010, we produced two publications which were circulated to Members as well as being posted on our website, as described on the following page.

"Accepting and Disclosing Gifts – a Guide for Members"

Section 7 of the *Members' Conflict of Interest Act* prohibits accepting a fee, gift or personal benefit that is directly or indirectly connected to the performance of an MLA's duties. Gifts and benefits received as a result of protocol or official duties are exempted from this rule, but must be disclosed if the value of the gift or benefit exceeds $250.00, or if the total value of gifts from a single source in a year exceeds $250.00.

In March, 2010 our Office issued a 16 page booklet, **"Accepting and Disclosing Gifts – a Guide for Members".** This Guide is the first comprehensive document prepared by this Office on the subject of gifts and was prepared to help Members and their assistants deal with issues that frequently give rise to questions about compliance with s.7 of the *Act*.

While a number of practical examples are included in the Guide, we cautioned Members that it should not become a substitute for seeking advice from the Commissioner on particular situations where there is any uncertainty.

Letter to Members providing guidance on when to provide letters of reference and support

An issue that frequently arises for Members is how to respond appropriately to requests to write letters of reference or support on behalf of constituents or others. In an effort to assist Members and their assistants respond to such requests, our Office sent a letter to all MLAs outlining some general guidelines and best practices to consider.

Opinions

All the public opinions decided in 2001 and later are posted on the website. During the reporting period, the Commissioner released one public opinion which was posted to the website in December, 2010 with the following description:

"IN THE MATTER OF AN APPLICATION BY CHRIS DELANEY WITH RESPECT TO ALLEGED CONTRAVENTION OF THE MEMBERS' CONFLICT OF INTEREST ACT BY THE HONOURABLE GORDON CAMPBELL, MLA FOR VANCOUVER POINT-GREY, PREMIER OF BRITISH COLUMBIA – December 14, 2010"

For a summary of this opinion, please see page 12.

Other Updates

All of our past Annual Reports are now available on our website.

Also, as noted above, the revised disclosure forms that Members are required to complete and file with our Office are available on our website.

- On January 6, 2010 the Commissioner met with Legislative Interns who had been selected for the program that has been sponsored for more than 30 years by the Legislative Assembly. The meeting took place at the beginning of the six-month Intern program as part of the orientation.

- On January 25, 2010 the Commissioner was appointed the Acting Information and Privacy Commissioner and Registrar of Lobbyists of the Province of BC. He held this temporary position concurrently with his role as the Conflict of Interest Commissioner until July 5, 2010.

- The Olympic Winter Games took place in Vancouver in February, 2010. As the Games approached, we anticipated that Members would have questions about how to respond appropriately to offers of gifts and hospitality. To help Members prepare, we issued a two-page bulletin in December, 2009 entitled "Members' Guide to Accepting Gifts During the 2010 Olympic Games". Following the Games, Members who received personal benefits related to the Olympics (primarily clothing and ticket events) filed Gifts and Personal Benefits statements. As required by s. 17(2) of the Act, these gifts were disclosed on the Members' Public Disclosure Statements, which were filed with the Clerk of the House in December, 2010.

- On March 3, 2010, the Speaker of the House announced the establishment of a three-member Panel to conduct a review of the mandates of the eight statutory officers in British Columbia. The Commissioner was invited to meet with the Panel and share his views. The Panel presented its confidential report to the Speaker on April 15,

2010, who referred it to the all-party Legislative Assembly Management Committee for consideration.

- Our Office is part of the Canadian Conflict of Interest Network (CCOIN) that includes the federal COI Commissioner and the Commissioners from all Canadian provinces and territories. Business meetings of the group are held annually in September, and are an opportunity to exchange information on issues of common interest and to review legislative and regulatory differences and trends. The Commissioner, as well as the Executive Coordinator and Researcher for the Office attended the 2010 annual meeting, which was held in Toronto.

  We are looking forward to hosting the next annual CCOIN conference, which will be held in Victoria from September 8-10, 2011.

- In the fall, the Commissioner spoke to the Institute of Internal Auditors on the topic of "Integrity – the Eternal Auditor", and to 3rd year Political Science students at Simon Fraser University on the topic of "Gifts, Gains and Conflicts of Interests".

- The Council on Governmental Ethics Law (COGEL) holds a conference every year. The Commissioner attended the 2010 COGEL conference in December, 2010, which was held in Washington D.C. The conference is an opportunity for professionals working in government ethics, elections, disclosure, enforcement, and other types of regulatory agencies to meet and interact with their peers. These contacts can prove invaluable, particularly as advances in technology and ongoing government reform efforts lead to rapid changes in how COGEL members accomplish the goals of their respective agencies.

PRIORITIES FOR NEXT YEAR

In the year ahead, we expect to continue our efforts in some areas of our work, enhance our efforts in others and undertake new projects.

- In last year's Annual Report, we highlighted the issue of how post-employment obligations differ between Cabinet Members in British Columbia and their counterparts at the federal level. We also reviewed the post-employment regime used in the United Kingdom, which is a peer-review based system, as a possible model that could be adapted for British Columbia. Over the next year, it is anticipated that there will be significant changes made to the post-employment guidelines in the United Kingdom. We will continue to monitor these developments as a basis for further discussion on this issue in British Columbia.

- At the time the *Members' Conflict of Interest Act* was enacted, it was one of the few examples of comprehensive conflict of interest legislation in Canada. However, the *Act* has remained unchanged since the amendments made in 1992. Since that time, conflict of interest issues have continued to evolve and we believe it is time to revisit the *Act* to ensure that British Columbia's legislation remains relevant to today's needs and continues to meet British Columbians' expectations for high ethical standards in government.

  We expect that in 2011 a special committee of the Legislature will be struck to review the *Act*. Issues under consideration may include whether the *Act* ought to apply to parliamentary assistants, and whether senior government officials and ministerial assistants ought to be subject to disclosure requirements. We look forward to participating in any

discussions that take place and offering our input into any proposed amendments.

- We will continue to issue publications on topics of interest to Members. For example, we have found that many newly elected Members are unaware that the disclosure statements they are required to submit as candidates under the *Financial Disclosure Act* are different than those they are required to submit to our Office once they are elected. One outcome of a review of the *Act* could be the harmonization of pre- and post-election disclosure requirements.

- Supervision of blind trust instruments will continue, as well as the ongoing development of templates for hold-mail accounts.

SUMMARY OF BUDGET AND FINANCIAL INFORMATION

The Select Standing Committee on Finance and Government Services ("the Committee") has the responsibility for considering and making recommendations on the budgets of this Office.

For the fiscal year 2009/10, the Committee approved a budget appropriation of $440,000 for the Office. Our actual spending for the year was $382,000, $58,000 under-budget. This was due to the Commissioner's salary and travel expenses being paid by the Office of the Information and Privacy Commissioner during the time that he was the Acting Information and Privacy Commissioner.

The Budget Proposal for 2011/12 – 2013/14 sought an annual budget of $480,000. This represents an increase of 9% in our operating budget, which we requested in order to effectively resource our Office and plan for staff succession. The Proposal was presented to the Committee on November 23, 2010. The Committee, in its Report dated December, 2010 recommended an operating budget of $480,000.

Our Budget Proposal and the Committee's recommendations are annexed to this Report as Appendix B.

ACKNOWLEDGEMENTS AND APPRECIATION

During the reporting period, there has been excellent cooperation from Members and their assistants in arranging disclosure meetings and providing the Office with the information and filings required by the *Act*. That cooperation has enhanced our productivity and response time and is much appreciated.

We also want to acknowledge the assistance and support that our Office has received from the Speaker and the Clerk of the House and their respective offices, as well as to the Caucus Chairs and their assistants.

We also want to recognize the good work of our Office colleagues:

Daphne Thompson

Ms. Thompson joined the Office in 1994 and thereafter was an Executive Assistant to all of the Commissioners to date. In 2009, she was appointed as the Executive Coordinator in the Office. Her work is greatly valued and much appreciated.

Alyne Mochan

Ms. Mochan is a lawyer with past experience in the Office of the British Columbia Ombudsperson. She is now in private practice and joined our Office in July, 2009 in a part-time contract position doing research and assisting in the preparation of materials. We are very fortunate to have her as a colleague.

Sandra Tice

Ms. Tice was hired as a part-time Administrative Assistant from January to December, 2010. We appreciated Sandra's courteous and helpful contributions

to the work of the Office. We wish her good health and happiness in the years to come.

During the reporting period, the Office has also obtained consulting advice on technical support, information technology and legal assistance, when required.

We look forward to our continuing work in the service of the public and the Legislative Assembly of British Columbia.

APPENDIX A: MEMBERS' CONFLICT OF INTEREST ACT

MEMBERS' CONFLICT OF INTEREST ACT

[RSBC 1996] CHAPTER 287

Contents

Section

1	Definitions
2	Conflict of interest
3	Conflict of interest prohibition
4	Insider information
5	Influence
6	Activities on behalf of constituents
7	Accepting extra benefits
8	Former members of Executive Council and former parliamentary secretaries
9	Carrying on business
10	Procedure on conflict of interest
11	Performance of responsibilities by minister
12	Voidability of transaction or procedure
13	Application for restitution
14	Commissioner
15	Annual report
16	Disclosure statement
17	Public disclosure statement
18	Commissioner's opinions and recommendations
19	Commissioner's opinion on referred question
20	Special assignments
21	Inquiry
21.1	Power to enforce summons and punish for contempt
22	Penalties
23	Protection of commissioner
24	Appropriation
25	Offence Act
26	Power to make regulations

Definitions

1 In this Act:

"child" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"commissioner" means the person appointed under section 14;

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"private corporation" means a corporation, all of whose issued and outstanding securities are subject to restrictions on transfer and are beneficially owned directly or indirectly by not more than 50 persons;

"private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

(a) applies to the general public,

(b) affects a member as one of a broad class of electors, or

(c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

(a) has entered into a written agreement under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

Conflict of interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Insider information

4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Activities on behalf of constituents

6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Accepting extra benefits

7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit referred to in subsection (2) exceeds $250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds $250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

(a) the nature of the gift or benefit,

(b) its source, and

(c) the circumstances under which it was given and accepted.

Former members of Executive Council and former parliamentary secretaries

8 (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.

(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,

(b) make representations on his or her own behalf with respect to such a contract or benefit, and

(c) make representations on another person's behalf with respect to such a contract or benefit.

(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

(8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than $5 000.

Carrying on business

9 (1) A member of the Executive Council must not

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party

if any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,

(c) the trustees must not consult with the member with respect to managing the trust property, and

(d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on conflict of interest

10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in the consideration of the matter.

(2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record

(a) the disclosure,

(b) the general nature of the conflict of interest disclosed, and

(c) the withdrawal of the member from the meeting.

(3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,

(a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and

(b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.

(4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must

(a) make the central record available for inspection by any person without charge during normal business hours, and

(b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

Performance of responsibilities by minister

11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must

(a) refrain at all times from attempting to influence the matter, and

(b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

(2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

Voidability of transaction or procedure

12 The failure of any member to comply with section 10 does not of itself invalidate

(a) any contract or other financial transaction, or

(b) any procedure undertaken by the government with respect to a contract or other financial transaction

to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

Application for restitution

13 Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

Commissioner

14 (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.

(3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.

(4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

(5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.

(6) If

(a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or

(b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,

the Lieutenant Governor in Council may appoint an acting commissioner.

(7) The appointment of an acting commissioner under this section terminates

(a) on the appointment of a new commissioner under subsection (2),

(b) at the end of the period of suspension of the commissioner, or

(c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,

whichever the case may be and whichever occurs first.

(8) The commissioner may employ or retain persons that the commissioner considers necessary and may

(a) specify their duties and responsibilities, and

(b) establish their remuneration and other terms and conditions of employment, or retainer.

(9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).

(10) [Repealed 1999-44-85.]

Annual report

15 The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

Disclosure statement

16 (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

(2) Subject to subsection (2.1), the disclosure statement must contain

(a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and

(b) any other information that is prescribed by the regulations to be contained in the disclosure statement.

(2.1) The disclosure statement of a member of the Executive Council who has complied with section 9 (1) (b) by entrusting his or her business to one or more trustees need not contain a statement of the nature of the assets, liabilities and financial interests contained in the trust.

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 2 (1) to (4) of the *Business Corporations Act*.

(5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must

(a) advise the member of the fact, in writing, and

(b) mention the fact in the public disclosure statement prepared under section 17.

(6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.

(7) In subsection (6), **"material change"** means a material change as defined in the regulations.

Public disclosure statement

17 (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except

(a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and

(b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.

(2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).

(3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must

(a) make the statement available to any person for inspection without charge and during normal business hours, and

(b) provide a copy of the statement on payment of a reasonable copying charge.

Commissioner's opinions and recommendations

18 (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the *Constitution Act*.

(2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.

(3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.

(4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.

(5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

Commissioner's opinion on referred question

19 (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.

(3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.

(4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

Special assignments

20 At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

Inquiry

21 (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

(2) For the purposes of preparing an opinion under section 19 or conducting a special assignment under section 20, the commissioner may order a person to do either or both of the following:

(a) attend, in person or by electronic means, before the commissioner to give evidence on oath or affirmation or in any other manner;

(b) produce for the commissioner a record or thing in the person's possession or control.

(2.1) An order under subsection (2) must be in the form of a summons, served on the person by personal delivery or registered mail to the person's last known address.

(3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.

(4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

(5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.

(6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

Power to enforce summons and punish for contempt

21.1 (1) The commissioner may make an order finding a person to be in contempt, and may impose a fine on or commit the person for contempt, if the person has been served with a summons under section 21 and fails or refuses to do any of the following:

(a) attend before the commissioner;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

(2) The commissioner may call on the assistance of any peace officer to enforce an order made under this section, and, if called on, the peace officer may take any action that is necessary to enforce the order and may use such force as is reasonably required for that purpose.

Penalties

22 (1) If the commissioner finds

(a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or

(b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,

the commissioner may recommend, in a report that is laid before the Legislative Assembly

(c) that the member be reprimanded,

(d) that the member be suspended for a period specified in the report,

(e) that the member be fined an amount not exceeding $5 000, or

(f) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides

(a) within 30 days after it is laid before the Legislative Assembly, or

(b) within 30 days after the next session begins if the Legislative Assembly is not in session.

(3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

Protection of commissioner

23 No action of any kind lies against the commissioner for anything he or she does under this Act.

Appropriation

24 Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

Offence Act

25 Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

26 Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.

Copyright (c) Queen's Printer, Victoria, British Columbia, Canada

Appendix B: Budget Proposal and Committee Review/Recommendation – Fiscal 2011/12-2013/14

BRITISH
COLUMBIA

Office of the
Conflict of Interest Commissioner

BUDGET PROPOSAL

2011/12 – 2013/14

Presented to

The Select Standing Committee on Finance and Government Services

Legislative Assembly of British Columbia

November, 2010

Office of the
Conflict of Interest Commissioner
BUDGET PROPOSAL
2011/12 – 2013/14

Contents

Background Information 1

Performance Information and Comparative Statistics 3

Operating Results for Fiscal Year 2009/10 and for the First Seven Months

(April 1 – November 1) of 2010/11 5

2011/12 Budget Request 6

Statement of Operations 7

Ongoing Operating Budget by Standard Object (STOB) 8

2011/12 Budget by Expenditure Type 9

Background Information

The Mandate

The *Members' Conflict of Interest Act* ("the Act") came into effect December 21, 1990, and provides a statutory framework for:

- Defining standards of official conduct for Members of the Legislative Assembly;
- Publicly disclosing the financial interests of all 85 Members of the Legislative Assembly;
- Providing mechanisms for the early identification and resolution of potential conflicts of interest;
- An opinion request process to deal with alleged conflicts of interest.

The Act provides for the appointment of a Commissioner, who is an independent Officer of the Legislative Assembly.

The Commissioner performs three separate but related roles:

First, the Commissioner acts as an adviser to Members. MLAs need to know what their obligations are and how to fulfil those obligations.

Second, the Commissioner meets with each Member at least annually to review the disclosure of the Member's financial interests and general obligations imposed by the Act.

Third, provides opinions in response to requests from MLAs or members of the public respecting compliance or alleged contraventions of the Act.

The Commissioner may provide written Opinions on requests by an individual Member, or by Executive Council, or by the Legislative Assembly, or by a member of the public and may at the request of the Lieutenant Governor in Council, or of the Legislative Assembly, undertake such special assignments as the Commissioner considers appropriate.

The Vision

- Assist Members with compliance and meaningful disclosure;
- Respond to requests in a timely and meaningful way by advancing towards a paperless office, capable of recording, indexing, storing and retrieving information which the Act requires must be collected and reported;
- Inform and educate the public about the imperatives and procedures contained in the Act;

- Document storage and information retrieval techniques, as well as ongoing communications with both the public and Members are under careful and ongoing review.

The Structure

We maintain two small office locations: the main office on Menzies Street as part of the Legislative Precinct; and an unstaffed satellite office in Surrey.

We have a staff of four people. The Commissioner's appointment is for 75% of his time. We have one full-time staff member who acts as our Executive Coordinator. Currently, we have two part-time contractors: a research professional on hourly contract; and a part-time (.6 FTE) junior administrative assistant to provide essential relief and clerical support.

Based on our workload, the staffing level of the Office is inadequate to properly service both existing and future needs.

To deal with the work on hand and as part of the succession plan, we need to engage a part-time (.6 FTE) assistant coordinator in the next fiscal year to learn our existing systems and the practices of the Office. The person will have had satisfactory administrative experience. In addition, and for essential relief and clerical support, we need a part-time (.4 FTE) junior administrative assistant on an on-going basis.

These proposed changes and additions have been factored into our budget proposal and request for 2011/12 and two succeeding years.

Performance Information and Comparative Statistics

The following charts illustrate the number of requests received in the Office, either by telephone, email, fax or regular mail.

Generally, requests fall into three categories:

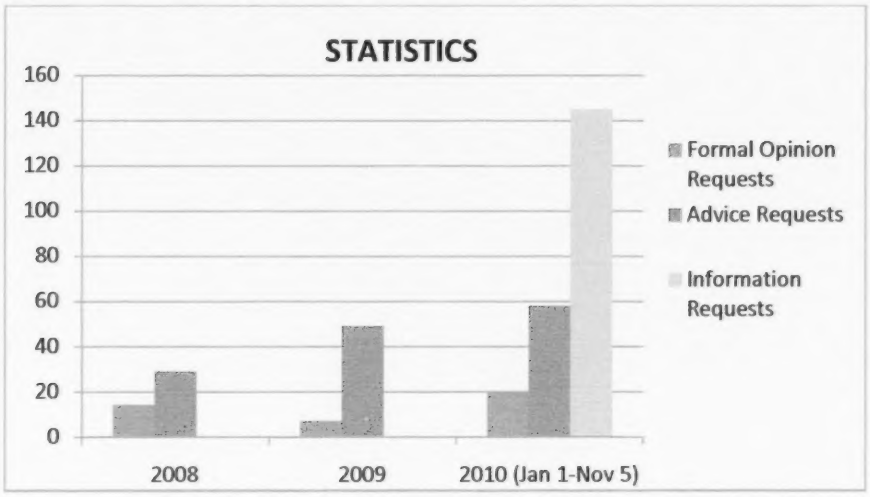
1. Requests for Information
2. Requests for Advice from Members
3. Requests for Formal Opinions from MLAs or members of the public

Requests for Information

The majority of requests received are for information. The bulk of these requests are from members of the public seeking clarification of our mandate. MLAs and their staff also ask for general information pertaining to a Member's obligations under the Act.

As a result of questions asked at your Committee's hearing in November, 2009, we began keeping a formal record of the number of the various requests. From January 1 to November 5, 2010, we received 145 requests for information.

TOTAL REQUESTS RECEIVED FOR:	2008	2009	2010
Information			145
Advice	29	49	58
Formal Opinions	14	7	20
Total	43	56	223



Requests for Advice

One of the Commissioner's primary roles is that of an adviser. Members make frequent requests for opinions about compliance to ensure they are not running afoul of the various prohibitions set out in the Act.

Requests for advice increased 69% from 2008 to 2009, and 58% from 2009 to November 2010.

Requests for Formal Opinions or Complaints

The Office receives these requests for formal opinions or complaints from MLAs and from members of the public. Initial screening has confirmed that the majority of requests received from the public are non-jurisdictional. Requests that fall within our mandate are first reviewed to determine whether an investigation is warranted. We often gather information to determine whether the matter should proceed. The number of actual investigations conducted is generally low.

Historically, the Office has always kept track of the number and type of requests received for advice and for formal opinions. Since January 1, 2010, however, our record keeping has become more precise.

The tracking system we currently use to keep statistics is only temporary. We are in the process of sourcing a more sophisticated system that will have the capacity to report on average response times.

Operating Results for Fiscal Year 2009/10 and for the First Seven Months (April 1 – November 1) of 2010/11

An analysis of these operating results begins that there were extraordinary operating circumstances that have affected both the current and the previous fiscal years. On January 25, 2010, the Commissioner was appointed by OIC as the Acting Information and Privacy Commissioner, in addition to his duties as Conflict of Interest Commissioner. He was paid one full salary (the equivalent of the annual salary paid to the Chief Provincial Court Judge) until he ceased to be the Acting Privacy Commissioner on July 6, 2010.

On instructions from the Cabinet Office, the Commissioner's entire salary, benefits and travel expenses from January 25 to July 6, 2010 were paid by the Office of the Information and Privacy Commissioner (OIPC). This resulted in savings to the COI budget of approximately $36,500 from its 2009/10 operating budget for the period January 25 to March 31, 2010. This amount was included in the funding surplus returned to the government from COI operations in fiscal year 2009/10.

For the first quarter of fiscal 2010/11, the Commissioner's entire salary, benefits and most travel expenses were paid by OIPC. This resulted in a gross savings to COI operations in 2010/11 of approximately $54,000. However, due to his additional time demands, the Commissioner increased the workloads of our part-time contractors during this period. The salary reallocation costs amounted to approximately $14,000, leaving a net savings of $40,000 to the COI budget allocation as a result of the OIPC payments. The salary reallocation costs within the COI Office could not otherwise have been funded within the existing 2010/11 fiscal year.

As of November 1, 2010, the Ministry of Finance has advised that our COI Office is currently on budget and forecast to end the fiscal year within our budget allocation of $440,000. Absent any unexpected or unusual expense, we expect to finish the current year in a surplus position of $40,000. This in turn will add to the positive contribution made over the last two fiscal years to the government's overall fiscal plan.

2011/12 Budget Request

It is requested and proposed that in the fiscal year 2011/12, the amount of $40,000 of expected surplus from fiscal year 2010/11 be added to our current operating budget allocation of $440,000 for a total of $480,000.

As the budget proposal STOB numbers indicate, these additional funds will largely be used to enhance our administrative salaries capability (STOB 50) and related benefits and allow us to implement the administrative succession plan described earlier in this submission to accommodate existing and future anticipated workloads and to allow the Office to plan for the future. The nature of the work we do and the importance of confidentiality and sensitivity in dealing with the information we collect and manage means that we must have a stable work force. It would be unwise to think that we can expect to hire staff on a casual and expedient basis. Hence, the urgent need to fund our long term staffing needs.

Statement of Operations

	2009/10 Budget $	2009/10 Actual $	2010/11 Budget $
Funding			
Voted appropriation	440,000	440,000	440,000
Other authorizations	0	0	0
Total funding	440,000	440,000	440,000
Expenses			
Employee Salaries	105,000	63,183	63,000
Employee benefits	28,000	25,546	21,000
Officer salary	195,000	161,823	203,000
Total Salaries and Benefits	**328,000**	**250,552**	**287,000**
Travel	26,000	16,134	22,000
Centralized management support services	28,000	27,612	0
Professional services	8,000	39,613	55,000
Information systems - operating	5,000	4,082	17,000
Office and business expenses	15,000	19,183	14,000
Statutory advertising	1,000	1,949	1,000
Utilities, materials and supplies	1,000	234	1,000
Building occupancy charges	8,000	14,790	35,000
Other expenses	20,000	8,100	8,000
Total Operating Expenses	**112,000**	**131,697**	**153,000**
TOTAL	**440,000**	**382,249**	**440,000**
Funding Surplus		**57,751**	
Estimated savings on Officer salary and benefits while Acting IPC		36,500	

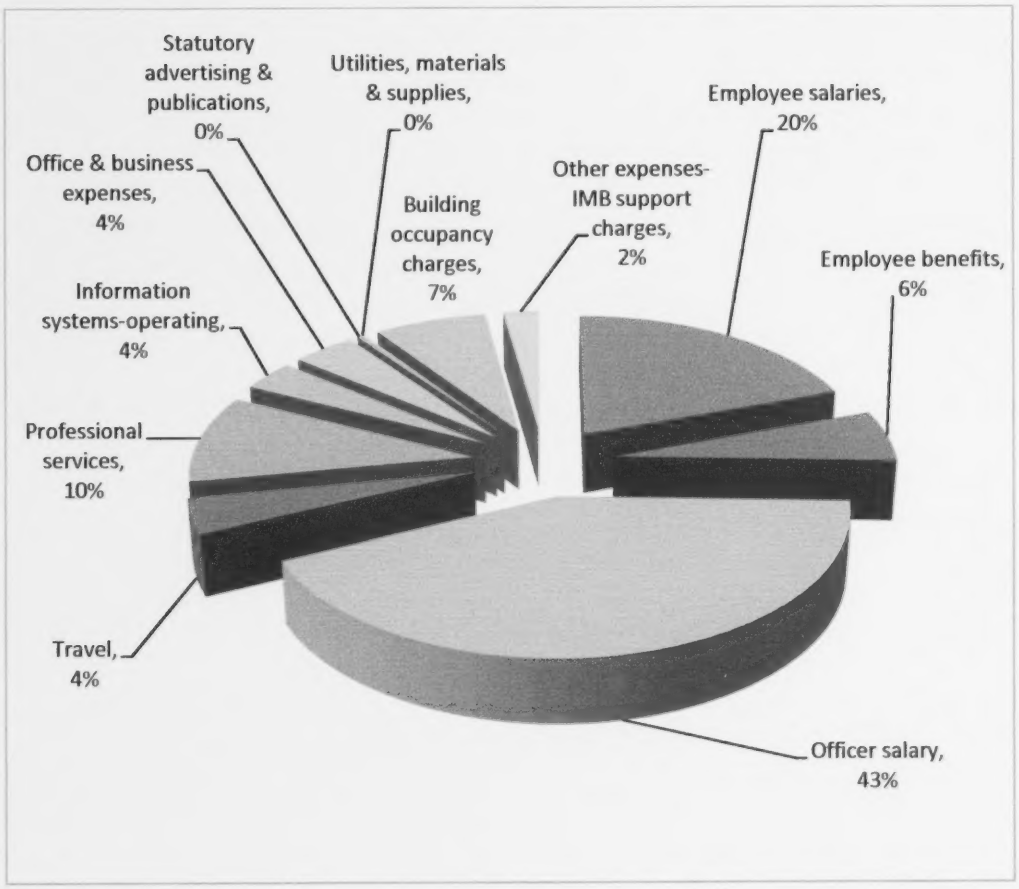
Ongoing Operating Budget by Standard Object (STOB)

		2010/11 Budget $	2011/12 Planned $	2012/13 Planned $	2013/14 Planned $
50	Employee salaries [1]	63,000	93,000	93,000	93,000
52	Employee benefits [2]	21,000	29,000	29,000	29,000
54	Officer salary	203,000	203,000	203,000	203,000
57	Travel [3]	22,000	20,000	20,000	20,000
60	Professional services [4]	55,000	50,000	50,000	50,000
63	Information systems - operating	17,000	17,000	17,000	17,000
65	Office and business expenses [5]	14,000	20,000	20,000	20,000
68	Statutory advertising & publications	1,000	1,000	1,000	1,000
69	Utilities, materials and supplies	1,000	1,000	1,000	1,000
75	Building occupancy charges	35,000	35,000	35,000	35,000
85	Other expenses-IMB support charges [6]	8,000	11,000	11,000	11,000
	Total operating budget [7]	**440,000**	**480,000**	**480,000**	**480,000**

Notes

1 To reflect 1.6 FTEs required for administrative workload and movement of administrative contractor from STOB 60 to STOB 50
2 Increase due to mandated benefits
3 Reduction due to savings in travel expenses
4 Reduction due to administrative contractor salary moving to STOB 50
5 Increase to reflect actual requirement
6 Increase to reflect actual Ministry of Finance technical support charges
7 9% increase to total operating budget

2011/12 Budget by Expenditure Type



Excerpt from

Select Standing Committee on Finance and Government Services'

Annual Review of the Budgets of the

Independent Legislative Offices

December 2010

Office of the Conflict of Interest Commissioner

> *"We could make do, but I'm not sure that it would be any more than a band-aid approach. While I know resources are limited, I think it would be a false investment. The reality is, in pure terms, that the number of Members has increased by 9 percent."* (Paul Fraser, QC, Conflict of Interest Commissioner for British Columbia)

Background

The Office of the Conflict of Interest Commissioner has a dual purpose: to serve and address the needs of the Members of the Legislative Assembly and Cabinet Ministers by providing an ethical framework to assist in reconciling their private interests and public duties; and to serve and inform the public. The appropriation for the Office is provided under Vote 3 of the annual *Estimates*. Last year, the Finance Committee recommended that the annual operating budget be $440,000 in each of the next three fiscal years.

Budget Proposal, 2011/12 – 2013/14

On November 23, 2010, the Finance Committee met to review the Office's budget proposal for the next three fiscal years. Representing the Office was Paul Fraser, QC, the Conflict of Interest Commissioner.

The Commissioner began his presentation by outlining the Office's mandate and current office structure. He reiterated the need for a digital information system when providing an account of the information requests the Office has processed in the past year. In his opening remarks, the Commissioner also emphasized the urgent need for a succession plan and additional staff.

For next year, the Commissioner requested an operating budget of $480,000, representing a net increase of $40,000 (or a 9% lift). He explained that the additional funds will be used mainly to increase the staff complement from 1.6 to 2 FTEs. With the extra position, the Commissioner anticipated that service delivery would improve and overtime costs reduced.

Committee Inquiry

The committee inquiry focused on the Office's staffing level and the disclosure statement. Members also asked questions about professional services (STOB 60), extension of the Office's jurisdiction to municipal politicians, and the two-year cooling-off period for BC office-holders.

Staffing level

The Finance Committee asked for clarification regarding the Office's request for an additional staff member. In his response, the Commissioner stressed that implementing the administrative succession plan is dependent on hiring additional junior staff, equivalent to 0.4 FTE.

The Commissioner then described the current staffing level as "rather a frail situation," because even a momentary sickness puts the Office in great difficulty trying to pick up the slack. Also, the Office is not in a position to hire people on an as-needed basis to handle the ebbs and flows of the workload, given the confidential and sensitive nature of its work. In the Commissioner's view, the current understaffing is impacting the quality of service delivery, particularly in terms of timeliness and completeness of information.

Disclosure statement

Another theme of the committee inquiry focused on the information-gathering protocols of the Office. Of particular concern was the paperwork required to process an MLA's confidential disclosure statement and the travel costs incurred to meet annually with the Commissioner to review this form. Some MLAs asked if it was possible to minimize the paperwork when there is little or no change in their material status from year to year, or when a material change had been captured previously by the "instant reporting" required by the *Members' Conflict of Interest Act*.

In response, the Commissioner explained that the filing of a confidential disclosure statement and the mandatory follow-up meeting can act as a "cathartic moment" by providing a routine opportunity for MLAs to disclose and discuss any changes in their assets, liabilities and financial interests. With regard to "instant reporting", the Commissioner explained that the requirement to file a report of a material change within 30 days improves transparency and provides the public with the opportunity to monitor changes in each MLA's situation in the course of a year, once the form is filed with the Office of the Clerk.

Conclusion and Recommendation

The Finance Committee is receptive to the Commissioner's plea for a modest increase in the operating budget to develop a slightly more robust staffing structure.

The Finance Committee recommends that:

- the annual appropriation for the operating expense of the Office of the Conflict of Interest Commissioner be $480,000 in each of the next three fiscal years.